

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES,)	Facility ID No. 3365
INC.)	
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL)	Facility ID No. 9993
SERVICES, INC.)	
)	
Permittee of FM Station KYAF,)	
Firebaugh, California)	
)	
H. L. CHARLES D/B/A FORD CITY)	Facility ID No. 22030
BROADCASTING)	
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY)	Facility ID No. 37725
BROADCASTING)	
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

ENFORCEMENT BUREAU'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER

1. On February 8, 2016, Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal) – as represented by Mr. Couzens – filed a motion for protective order.¹ For the reasons discussed below, the Chief, Enforcement Bureau, through his attorneys, respectfully opposes this Motion.

2. First, there has been no determination that the Central Valley and Avenal entities represented by Mr. Couzens are in fact the permittees named in this proceeding. Indeed, the Presiding Judge has repeatedly recognized that there remain substantial questions of fact concerning the ownership and control of these companies that must be resolved before this case can proceed.² Moreover, the Presiding Judge has recognized that discovery is necessary before any such determination can be made.³ On this basis alone, Central Valley and Avenal's motion seeking protection from answering such discovery should be denied.

3. Second, Central Valley and Avenal argue that they should be protected from responding to the Bureau's discovery requests because the Bureau is precluded from inquiring into – and prosecuting – any conduct that occurred more than ten years ago.⁴ In support, Central Valley and Avenal rely on the Commission's *Policy Regarding Character Qualifications in*

¹ See Motion for Protective Order (47 C.F.R. Sec. 1.313), filed Feb. 8, 2016 (Motion).

² See, e.g., *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015) at 3; *Memorandum Opinion & Order*, FCC 16M-01, (ALJ, rel. Jan. 12, 2016), at 2-5.

³ See, e.g., *Order*, FCC 16M-01, at 5 (ordering discovery to commence).

⁴ See, e.g., Motion at 2-4. Central Valley and Avenal made this same argument in their pending motion to dismiss. See Motion to Dismiss Entire Proceeding, filed Sept. 22, 2015, at 2-4. Relying on this same argument in the instant Motion here as a basis for not responding to discovery requests appears to ignore the fact that the Presiding Judge has already instructed Central Valley and Avenal – and Mr. Couzens specifically – that full cooperation in discovery is expected *before* the Presiding Judge will consider the arguments made in the pending motion to dismiss. See *Order*, FCC 15M-32 (ALJ, rel. Dec. 14, 2015) at 2 and n 1.

Broadcast Licensing, Report, Order and Policy Statement (Commission's 1986 Character Policy).⁵ However, the Commission's 1986 Character Policy suggests only that, *as a general matter*, the Commission should impose a 10-year limitation when considering past conduct in the context of examining an applicant's (or, in this case, a permittee's) character.⁶ The Commission retains the discretion to investigate and consider conduct that occurred beyond that time period if the circumstances warrant.⁷

4. Here, the circumstances so warrant. In fact, the only reason the issues in the HDO have not yet been fully prosecuted is because, **at the request of Central Valley and Avenal (and the other parties to the proceeding)**, Administrative Law Judge Steinberg stayed the proceeding in September 2003 and again, indefinitely, in March 2004.⁸ This stay was not lifted until the Presiding Judge's recent *Order*, FCC 15M-21,⁹ after which time the Bureau expeditiously re-commenced its prosecution of this case.¹⁰ Central Valley and Avenal cannot reasonably claim to have been prejudiced by a delay that was precipitated by their own actions. To deny the Bureau the opportunity to investigate the allegations against Central Valley and Avenal on the grounds that they are time-barred when Central Valley and Avenal asked for the

⁵ See Motion at 2.

⁶ See *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179, 1229 (1986) (emphasis added).

⁷ In the Commission's 1990 *Policy Statement and Order* concerning character qualifications, it modified certain of the policies it enunciated in the Commission's 1986 Character Policy, including allowing the Commission to consider evidence of any conviction for misconduct involving a felony, regardless of when the conduct occurred. See *Policy Statement and Order*, 5 FCC Rcd 3252 (1990); see also *Titus*, 29 FCC Rcd 14066, 14071 (2014) (concluding that the Commission could consider convictions that occurred more than ten years before the Order to Show Cause).

⁸ See *Order*, FCC 03M-39 (ALJ, rel. Sept. 12, 2003); *Order*, FCC 04M-09 (ALJ, rel. Mar. 5, 2004).

⁹ See *Order*, FCC 15M-21, at 2.

¹⁰ Notably, Central Valley and Avenal thwarted the Bureau's first efforts to obtain discovery in this matter, refusing to provide a substantive response to any of the Bureau's requests for documents or interrogatories. The Bureau was forced to file a motion to compel. See Enforcement Bureau's Motion To Compel Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. To Provide Complete Responses To Outstanding Discovery Requests, filed Aug. 21, 2015. This motion is pending before the Presiding Judge.

proceeding to be delayed would make a mockery of the Commission's hearing process. For this reason, as well, the instant Motion should be denied.

5. Third, Central Valley and Avenal fail to provide any basis for their assertion that the Bureau's discovery requests are disproportional. Although Central Valley and Avenal suggest they should be spared from responding to all of the Bureau's discovery requests because they are "onerous, vast and expensive,"¹¹ they do not provide any example of the purported "onerous" or "vast" nature of any specific request. Instead, Central Valley and Avenal focus primarily on the expense of responding to the Bureau's requests, asserting, for example, that responding to 91 requests for admission (together with other requests) would jeopardize their ability to stay in business.

6. However, this assertion is grossly misleading. The "91 requests for admission" figure actually represents the *combined* requests for admission served on both Central Valley and Avenal.¹² To the best of the Bureau's knowledge, Central Valley and Avenal are different companies, operate different businesses, and purportedly hold permits for different radio stations. Thus, they have different discovery obligations. The Motion offers no explanation of how the Bureau's discovery requests impose any individual burden on either Central Valley or Avenal.

7. Moreover, the Motion appears to suggest that the Presiding Judge should gauge the proportionality of the Bureau's requests by considering the newly-adopted Federal Rules of Civil Procedure.¹³ Yet, here again, the Motion fails to articulate any basis for finding that the Bureau's discovery requests are not proportional when compared, for example, to the importance

¹¹ Motion at 7.

¹² The Bureau served 48 requests for admission on Central Valley and 43 requests for admission on Avenal.

¹³ See, e.g., Motion at 6.

of the issues addressed in the requests, the individual parties' access to the requested information, the parties' individual resources, and the importance of the requested discovery in resolving the issues in the case.¹⁴ It also fails to offer any explanation of how the purported burden or expense of the Bureau's discovery requests on Central Valley and Avenal outweighs their likely benefit to the case.¹⁵ As a result, the Motion should be denied on this ground as well.¹⁶

Conclusion

8. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge deny Central Valley and Avenal's Motion.

¹⁴ See, e.g., *id.* at 6 and Fed. R. Civ. P. 26(b)(1) (2015).

¹⁵ See, e.g., Fed. R. Civ. P. 26(b)(1) (2015).

¹⁶ The Bureau notes that Central Valley's and Avenal's responses to the Bureau's January 21, 2016 second set of interrogatories were due February 4, 2016. On January 22, 2016, Mr. Couzens represented that Central Valley and Avenal intended to answer the Bureau's interrogatories but requested an extension to accommodate Mr. White's travel schedule. See Letter from Michael Couzens to Pamela Kane (dated Jan. 22, 2016), attached hereto as Exhibit 1. The Bureau granted a short extension that would allow the Bureau sufficient time to review any such responses and to determine if motions to compel were necessary before the February 17, 2016 deadline set forth in *Order*, 16M-01. See Email from Pamela Kane to Michael Couzens, attached hereto as Exhibit 2. Instead of providing a response to the Bureau's interrogatories, Central Valley and Avenal instead used the additional time the Bureau granted to prepare the instant Motion.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Pamela S. Kane", written over a horizontal line.

Pamela S. Kane
Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554
(202) 418-1420

Michael Engel
Special Counsel
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C366
Washington, D.C. 20554
(202) 418-7330

February 11, 2016

EXHIBIT 1

ADMITTED IN
CALIFORNIA AND IN THE
DISTRICT OF COLUMBIA

MICHAEL COUZENS
ATTORNEY AT LAW
6536 TELEGRAPH AVENUE, SUITE B201
OAKLAND, CALIFORNIA 94609
TELEPHONE (510) 658-7654
FAX NO. (510) 654-6741

MAILING ADDRESS
POST OFFICE BOX 3642
OAKLAND, CALIFORNIA 94609
e-mail cuz@lptv.tv
www.lptv.tv

January 22, 2016

Pamela S. Kane
Special Counsel -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: William L. Zawila
EB Docket No. 03-152

Dear Counsel:

This letter is an effort to meet and confer informally regarding the pending interrogatories you directed yesterday to Avenal Educational Services, Inc. and Central Valley Educational Services, Inc.

We make an assumption favorable to the demanding party that these interrogatories are directed to my clients, and we intend to answer them. We are unsure whether there is an expectation of parallel responses from William L. Zawila, and that will not affect our obligation to respond. We believe that Zawila has no right, title or interest in these entities.

The person most knowledgeable with respect to these matters is Vern White. Please be advised that Mr. White is in Fort Lauderdale where he is leaving tomorrow on a cruise and will not be home again until February 2. In view of this, and in light of the scope of the demand, I request an extension of the time to respond of two weeks, until Thursday, February 18.

I also want to clarify one bit of our approach here. Noting the definitions, item U, "state" or "describe" we will be providing responses based only on the actual knowledge of Mr. White, other principals or agents, and such documents as can be identified in their custody and within the scope of the demand. Respondents will not be performing new original research of any kind, as respects public Commission records or any other sources.

Let me know on the deadline. I hope this finds you safe and secure in the Mid-Atlantic blizzard.

Sincerely,

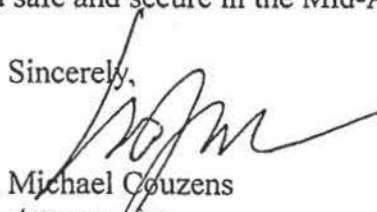

Michael Couzens
Attorney for
Avenal Educational Services, Inc. and
Central Valley Educational Services, Inc

EXHIBIT 2

Pamela Kane

From: Pamela Kane
Sent: Wednesday, January 27, 2016 9:22 AM
To: Michael Couzens (cuz@well.com)
Cc: Michael Engel
Subject: Zawila: EB Docket No. 03-152 Request for extension

Mr. Couzens:

We apologize for the delay in responding to your request for an extension to respond to the discovery the Bureau served on Avenal and Central Valley on January 21, 2016. In light of the snowstorm and the government's closure, we did not have access to all of the necessary materials to consider your request until today.

In accordance with the Commission's rules, Avenal's and Central Valley's responses would be due no later than February 4, 2016. Your letter requests a two-week extension until February 18, 2016. However, pursuant to the Presiding Judge's *Order*, FCC 16M-01, the parties are required to submit motions to compel on any unresolved discovery issues by February 17, 2016. Accordingly, the Bureau cannot agree to your request for an extension beyond this date.

In an effort to accommodate Mr. White's travel plans, and also to allow the Bureau the time necessary to review Avenal's and Central Valley's responses and to determine if motions to compel are necessary before the Court-ordered deadline, the Bureau is willing to grant Avenal and Central Valley an extension until February 8, 2016 to respond to the Bureau's discovery requests.

Please confirm whether Avenal and Central Valley will be serving their complete responses by February 8, 2016.


CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 11th day of February, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

William Zawila, Esq.
12600 Brookhurst Street, Suite 105
Garden Grove, CA 92804-4833
(714) 636-5040 (telephone)
& (714) 636-5042 (facsimile)
(by facsimile and first-class mail)

Michael Couzens
Michael Couzens Law Office
6536 Telegraph Avenue
Suite B201
Oakland, CA 94609
(by first-class mail and email to cuz@well.com)


Alicia McCannon